

ADVERTISEMENTS & PUBLIC NOTICES

OVERVIEW

These examination procedures were developed to assist examiners in the review of public notices, advertisements and signs for compliance with applicable consumer protection and civil rights regulatory requirements.

Examination Objective(s)

The objectives of the examination are to:

- Determine whether the financial institution displays all required public notices
- Determine whether public notices, advertisements, and signs comply with applicable regulatory requirements
- Assess whether advertisements are misleading or inaccurate

In This Section

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DEFINITION(S)

For the purpose of these examination procedures, the term "advertisement" refers to any written or verbal message, including:

Advertisement

- Newspapers, magazines, or catalog advertisements
- Brochures, direct mail literature, messages on customer statements, or other printed materials, including applications
- Electronic Media including Internet home pages

**DEFINITION(S)
(cont'd)**

- Signs, either interior or exterior, and displays
- Radio, television, or a public address system broadcasts

**Advertisement
(cont'd)**

- Oral communications between financial institution employees and actual or potential customers, including telephonic and face-to-face solicitations or response to inquiries

NOTE: Any primary form of advertisement should be included in examination review. Oral disclosures can be reviewed by phoning the financial institution and requesting information (orally).

**Advertisement
(Regulation Z)**

A commercial message in any medium that promotes, directly or indirectly, a credit transaction.

**Advertisement
(Regulation DD)**

A commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

Triggering Terms

Specific terms used in various advertising media that "trigger" additional disclosures.

**GENERAL
EXAMINATION
PROCEDURES****Preliminary
Assessment****General Procedures for Advertisement Media**

1. Determine the types of advertisement media used and types of services or products that have been promoted. Review:
 - Advertising policies
 - Advertisement file
 - Advertising expense records, particularly payments to various media, such as radio, television and newspapers
 - Phone solicitation and radio and television commercial scripts
2. Determine the extent and adequacy of the compliance training received by staff responsible for responding to consumer inquiries and providing loan and deposit product and service information.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Preliminary
Assessment
(cont'd)**

3. Determine the extent and adequacy of compliance training received by staff engaged in phone solicitations for various loan and deposit products.
4. Determine the extent and adequacy of the review of advertisements and public notices for compliance with all applicable rules and regulations.
5. Determine what audit procedures exist to ensure that all advertisements and solicitations (verbal and written) comply with applicable regulatory requirements.

✓**TIP:** An awareness of advertisement issues should be maintained throughout the examination process when observing lobby signs or displays and off-premises signs or oral messages which may reference the financial institution.

**Lobby Signs and
Required Public
Notices**

Community Reinvestment Act (CRA), Part 345

1. Determine that the appropriate CRA public notice is displayed as required.

*NOTE: For small institutions, or those institutions which opt to comply with the regulation prior to the 7/1/97 full implementation date, refer to Section 345.44. For all other institutions, refer to Section 345.6. Any institutions that opt for the notice prescribed in Section 345.44 of the revised rule prior to 7/1/97 **should not**, however, be cited for noncompliance, as the primary difference is the inclusion of the notice of availability of examination schedules.*

(345.44 and 345.6)

Fair Housing Act, Part 338

1. Determine that the required Fair Housing Poster, either the Equal Housing Lender poster or HUD's Equal Housing Opportunity poster is:
 - 11 x 14 inches in size
 - Conspicuously displayed in a central location within the bank where deposits are received or residential real estate-related transactions are made (338.4), and

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

- The Equal Housing Lender poster contains the correct text in the proper format of 338.4(b) or 24 CFR Part 110.25(a) for HUD's Equal Housing Opportunity poster.

NOTE: The Equal Housing Lender poster and the Equal Housing Opportunity Poster are available both in English and Spanish. Copies of the Equal Housing Lender poster may be obtained by submitting a written request to:

*FDIC Warehouse
550 17th Street, NW
Washington, D.C. 20429-9990
FAX: (301) 772-8360*

Copies of HUD's Equal Housing Opportunity poster may be obtained by submitting a written request or calling:

*Fair Housing Information Clearinghouse
P.O. Box 9146
McLean, Virginia 22102
Telephone: (800) 343-3442*

Requests for either poster should indicate the number of posters, English or Spanish and the name and address of the financial institution. There is no charge for either poster.

Home Mortgage Disclosure Act (HMDA), Regulation C

1. If the institution is subject to HMDA reporting, determine that the required notice about the availability of the HMDA Disclosure Statement is displayed in the main office and at each branch located in a Metropolitan Statistical Area (MSA). (203.5(e))
2. Determine if the notice contains one of the following:
 - A statement of where the HMDA Disclosure Statement may be obtained
 - A statement that the location where the HMDA Disclosure Statement can be obtained will be provided upon request

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

NOTE: There is no required language for the HMDA Disclosure Statement Availability Notice. See Appendix A to Regulation C for suggested language. The FDIC has developed a poster utilizing the language in Appendix A. Copies of the poster may be obtained by submitting a written request to:

*FDIC Warehouse
550 17th Street, NW
Washington, D.C. 20429-9990
FAX: (301) 772-8360*

Requests should indicate the number of posters needed and the name and address of the financial institution.

Advertisement of Membership, Part 328

1. Determine that the required official (FDIC) sign is displayed at each station or window where deposits are received.

There are two official signs:

- The official bank sign, which may be used solely by banks (328.2)
- The official savings association sign, which may be used by banks and savings associations (328.4)

NOTE: The institution's charter determines whether the official bank sign or official savings association sign is appropriate.

Display of the official sign at automated teller machines (ATMs) is not required.

2. If required posters, signs, etc. are missing or obsolete, inform management of the availability of these items from the FDIC Warehouse upon request.

"Member FDIC" counter-top and window signs and decals are also available and may be obtained by submitting a written request to:

FDIC Warehouse
550 17th Street, NW
Washington, D.C. 20429-9990
FAX: (301) 772-8360

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

Requests should indicate the number of each requested item needed and the name and address of the financial institution.

3. If the financial institution has on-premises investment services or offers municipal securities or retail repurchase agreements (uninsured investment services and products), determine that promotional materials, including lobby signs and brochures, do not mislead consumers as to the product's insured status.

✓TIP: Advertisement of investment products available on financial institution premises which are misleading to a consumer about their uninsured status may require review by Division of Supervision (DOS) staff and a page 1 comment within the compliance report.

Refer to: DOS Memorandum, Examination Procedures for Banks Involved with the Sale of Nondeposit Investment Products (Subject Classification Number 6610), Transmittal #DOS-94-067, dated 4/28/94, for further information and Financial Institution Letter (FIL-61-95) addressing Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, dated 9/13/95.

Expedited Funds Availability Act (EFTA)

1. Determine if funds availability notices are conspicuously posted at locations where employees accept consumer deposits, including proprietary ATMs. (229.18(b) and 229.18(c))

Be aware, however, of the following special rules and exceptions:

- EFTA Regulations do not require specific language for lobby and ATM EFTA notices

Refer to Appendix C to Regulation CC for Model Notice Forms.

- Drive-up windows and night depositories do not require the notice
- Special notice requirements apply to proprietary ATMs (see below)

Special Funds Availability Notice for Proprietary ATMs

2. Determine if the financial institution displays a notice at each proprietary ATM stating the funds deposited in the ATM may not be available for immediate withdrawal. (229.18(c)(1))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

NOTE: If the financial institution has off-premise proprietary ATMs from which funds are not collected more than twice a week, determine if the institution discloses, on or at the ATM, the days upon which the deposits made at the ATM will be considered "received." (229.18(c)(2))

Truth in Lending (Regulation Z)

1. If a sign or lobby board displays lending rates, determine that it includes the disclosures required by Regulation Z. (226.16 for open-end and 226.24 for closed-end)

Refer to examination procedures for Truth in Lending Requirements under the Advertising Media area of this section.

Consumer Leasing (Regulation M)

1. If a sign or lobby board displays leasing rates, determine that it contains the disclosures required by Regulation M. (213.5)

Refer to examination procedures for Consumer Leasing under the Advertising Media area of this section.

Truth in Savings (Regulation DD)

1. If a sign displays deposit rates, determine that it includes the disclosures required by Regulation DD. (230.8)

Refer to examination procedures for Truth in Savings Requirements under the Advertising Media area of this section.

Special Rule for Indoor Signs

2. Section 230.8(e)(2) provides special requirements for indoor signs that are not viewable from outside the premises.

If the indoor sign states deposit account rates of return, the following disclosures, at a minimum, must be made:

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

- The interest rate must be stated as or in conjunction with an "annual percentage yield" or the abbreviation "APY"
- The sign must include a statement advising consumers to contact an employee for further information about applicable fees and terms

NOTE: If the institution chooses not to comply with the special limited disclosure exception found in Section 230.8(e)(2), then full disclosure of all required terms must be made.

Section 42 – Notice of Branch Closure

NOTE: If the institution operates a branch office, specific guidelines must be followed when closing a branch.

1. Determine if the financial institution closed any branches. If so, determine whether the institution complied with the following requirements of Section 42 of the Federal Deposit Insurance Act.
2. Determine if the institution mailed an adequate notice to its customers at least 90 days prior to the proposed closing of the branch. (42(b)(2)(B))
3. Determine if the institution posted a conspicuous notice to the branch customers on the branch premises at least 30 days prior to the proposed closing. (42(b)(2)(A))

Equal Credit Opportunity, Regulation B

1. Review lobby signs or other displays which may suggest possible discrimination by the institution on a prohibited basis.
2. Determine if loan information provided at one office differs from another. Ask for an explanation of any disparities.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

NOTE: Section 202.5(a) of Regulation B, Equal Credit Opportunity, forbids a creditor from making any oral or written statement, in an advertisement or otherwise, to applicants or prospective applicants that would discourage the applicant from making or pursuing an application on one of the prohibited bases found in Section 202.4 of Regulation B.

**Advertising
Media**

Review of Advertising File

1. Review the financial institution's advertisements since the previous examination. If the file is voluminous, select a sampling of advertisements.

Select sampling based upon:
 - Product and service type (open-end credit plans, real estate loans, other closed-end loans, leases, deposit services, etc.)
 - Media used (television, newspaper, radio, etc.)
2. Determine if the financial institution reviews advertisements for compliance with applicable regulatory requirements. Assess effectiveness of the institution's compliance review procedures based upon a sampling of the advertising file.

Community Reinvestment Act (CRA), Part 345

NOTE: Advertising is a significant part of a financial institution's marketing program and further analysis of this area will be necessary for completion of the CRA evaluation for large institutions. (Do not review marketing for small institutions and other institutions opting to comply with the revised regulation prior to the July 1, 1997 implementation date.)

No level of emphasis on the CRA process, such as advertising, should detract from an otherwise satisfactory record of performance. (345.7(b))

1. Determine what types of advertising media are used.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

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|----|---|
| 2. | For each media, determine circulation or broadcast area. |
| 3. | Identify the target audiences for advertisement, if applicable. |
| 4. | Determine the purpose of the advertisements, for example, general image advertising or specifically designed to promote a particular credit product or deposit service. |
| 5. | Identify the extent of advertising for credit products offered. |
| 6. | Determine whether the institution advertises in media aimed at such markets or in media known to appeal to such markets, if the institution's CRA community includes minority markets. (FFIEC, Guide to Home Mortgage Lending and Equal Treatment pamphlet) |

Fair Housing, Part 338

- | | |
|----|--|
| 1. | <p>If a printed advertisement includes any real estate lending products or services, determine whether the Equal Housing Lender or Equal Housing Opportunity logotype, statement, or slogan is appropriately used.</p> <p><i>NOTE: The Equal Housing Lender (symbol of house) with legend (the phrase "Equal Housing Lender") or the Equal Housing Opportunity (symbol of house) with the legend (the phrase "Equal Housing Opportunity") must, as a general rule, be used together. (338.3)</i></p> <p><i>Additional guidelines on the use of the legend and size requirements for the logotype may be found within the Department of Housing and Urban Development's Fair Housing Act's implementing regulation.</i></p> |
| 2. | <p>Review home loan advertising content to determine whether any preference is indicated for a particular segment of the community resulting in the possible discouragement of other applicants on one of the prohibited bases found in Regulation B and the Fair Housing Act. (338.3(b))</p> |

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

Advertisement of Membership, Part 328

1. Determine if the official advertisement statement "Member FDIC" is properly included in print and broadcast (television, radio) advertisements. (328.3)

*NOTE: There are many exceptions to this rule. The official advertising statement **is not required** for non-deposit advertisements, such as advertisements for loans and trust services.*

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)****Advertising
Media (cont'd)**

*Section 328.3(c) lists the following types of advertisements that **do not require** the "Member FDIC" disclosure:*

- *Statements of condition that are required by law to be published*
- *Printed forms and supplies such as stationary, envelopes, checks, certificates of deposit*
- *Financial institution signs in the lobby or attached to the building*
- *Listings in directories (not advertisements)*
- *Advertisements that do not include the financial institution's name*
- *Display advertisements in a financial institution's directory where the institution's name and its FDIC membership are listed elsewhere in the directory*
- *Joint or group advertisements of banking services which list other involved financial institutions*
- *Radio or TV advertisements which do not exceed 30 seconds in time*
- *Promotional items such as pens, calendars, and matchbooks that make such disclosure impractical*
- *Advertisements that contain a statement to the effect that the financial institution is a member of the FDIC or that deposits are insured by the FDIC up to \$100,000 per depositor*
- *Advertisements for non-deposit products, such as loans*
- *Safe deposit advertisements*
- *Trust services advertisements*
- *Advertisements for real estate services*
- *Advertisements for armored car services*
- *Advertisements related to service charges or analysis charges*
- *Securities advertisements*
- *Travel service advertisements including traveler's checks*
- *Savings bank life insurance advertisements*

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

3. If the official advertisement statement "Member FDIC" is in a language other than English, determine whether prior written approval of the translation was obtained from the FDIC. (328.3(e))

Uninsured Investment Services and Products

4. Determine if the financial institution offers:

- On-premise investment services
- Municipal or other securities
- Retail repurchase agreements

If so, determine that the promotional materials, including lobby signs and brochures, do not indicate that these products are covered by FDIC Deposit Insurance or otherwise mislead consumers as to the product's insured status.

NOTE: Consult with the Division of Supervision (DOS) on investment product advertising that may mislead consumers to believe that such products are covered by Federal Deposit Insurance. If after consultation with DOS the determination is made that the advertising is or may be misleading, a comment should be included on this topic in the Page 1, Examiner's Comments and Conclusion page.

Refer to DOS Memorandum, Examination Procedures for Banks Involved in the Sale of Nondeposit Investment Products, Transmittal #DOS-94-067, dated April 28, 1994, and Financial Institution Letter (FIL-61-95) addressing Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, dated 9/13/95, for further guidance and instructions on this topic.

Truth in Lending, Regulation Z

Open-End Credit

1. Determine that advertisements for open-end credit comply with the requirements listed below:
 - The advertisement shall state only those terms the institution is prepared to offer (226.16(a))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Loan rates must be expressed as an "annual percentage rate" or "APR" (226.14(b))
- Advertisements for variable-rate consumer credit products must disclose that the APR may increase after consummation (226.16(b)(2))

"Triggering" Terms

2. Determine if any open-end credit advertisement contains one of the following "triggering" terms:
 - A statement of when the finance charge begins to accrue, including the "free ride" period (if any)

Examples: "Up to 30 days of free credit if you pay in full each month" or "We charge interest from the date we receive notice of your purchase"
 - The periodic rate used to compute the finance charge or the APR

Examples: "Less than 1.5% per month" or "14% APR"
 - The method used to determine the balance on which a finance charge is computed

Examples: "A small monthly service charge on your remaining balance each month" or "Interest will be charged on your average daily balance each month"
 - The method used to determine the finance charge, including a description of how any finance charge other than the periodic rate will be determined

Examples: "You only pay \$1.00 each time you write an overdraft check" or "Minimum finance charge of \$.50 per month"
 - The amount of any charge other than a finance charge that may be imposed as part of the plan

Example: "There is a \$25 annual membership fee to get your card"
3. If the advertisement contains one of the above "triggering" terms, then all of the following additional disclosures must be made:
 - Any minimum, fixed, transaction, activity, or similar charge

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Any periodic rate that may be applied, expressed as an "APR"
 - Any membership or participation fee
- (226.16(b))

**Special Disclosure Rules for Open-End Variable-rate Credit Plan
Advertisements Containing "Triggering" Terms**

4. If an advertisement for an open-end variable-rate credit plan contains one of the "triggering" terms listed above, then the advertisement must also disclose the existence of any variable-rate feature.

5. In disclosing the APR for a variable-rate plan, the creditor may:

- Use an insert showing the current rate
- State the APR as of a specified recent date
- Provide an estimated APR along with an explicit statement that the rate disclosed is an estimate

The estimate must be based on the best information reasonably available at the time of the advertisement.

(226.16(b)(2) and Official Staff Commentary)

**Special Disclosure Rules for Discounted Variable-rate
Open-End Plan Advertisements**

6. If an advertisement for a discounted variable-rate plan contains a "triggering" term, the advertisement must include, in addition to the other required information:

- The introductory APR (with a statement as to how long it will remain in effect)
- The current indexed rate (with a statement that this second rate may vary)

NOTE: To show the current indexed rate for a discounted variable-rate plan, the financial institution should follow one of the options listed below as set forth in Section 226.16(b)(5) of the Official Staff Commentary:

-- *Use an insert showing the current rate*

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

<p>-- <i>State the APR as of a specified recent date</i></p> <p>-- <i>Provide an estimated APR along with an explicit statement that the rate disclosed is an estimate</i></p> <p><i>The estimate must be based on the best information reasonably available at the time of the advertisement.</i></p> <p>(226.16(b)(2) and Official Staff Commentary)</p>
<p align="center">Special Disclosure Rules for Credit and Charge Cards</p>
<p>Direct Mail Disclosures</p>
<p>7. For all credit and charge card direct mail solicitations and disclosures, determine that the disclosures:</p> <ul style="list-style-type: none"> • Are accurate as of the mailing date • Contain terminology consistent with that used in the disclosures under Sections 226.6 and 226.7 <p><i>NOTE: The terms "annual percentage rate" and "finance charge" need not be more conspicuous than other required disclosures.</i></p>
<p>8. Determine whether the institution furnishes, in a tabular format, on or with creditor-initiated <u>direct mail</u> applications and solicitations to open credit and charge card accounts, the applicable written disclosures listed below:</p> <p><i>NOTE: Credit card issuers must disclose all applicable items listed below for Sections 226.5a(b)(2) through 226.5a(b)(10), except for the procedures related to Section 226.5a(b)(7). Charge card issuers must disclose the applicable items listed in Sections 226.5a(b)(2), (4), and (7) through (10), as applicable.</i></p> <p>(a) The annual percentage rate or rates for purchases.</p> <p>Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an annual percentage rate (as determined by Section 226.14(b)). When more than one rate applies, the range of balances to which each rate is applicable shall also be disclosed. (226.5a(b)(1))</p>
<p>-- If the account has a variable-rate, determine that the institution has disclosed that fact and how the rate is determined</p>

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- If the institution uses a margin with a variable-rate account (for example, a value added to the index to compute an interest rate), determine that it discloses the amount or range of the margin
- If the rate is variable, determine that the institution discloses an APR that was in effect within 60 days before the mailing (If the initial rate is discounted, determine that the institution discloses an APR that would otherwise apply to the account, for example, a rate based on the index plus margin.)

- (b) Any annual or periodic fee that may be imposed for issuance or availability of a card, including a one-time membership fee, periodic membership fees or fees based on account activity or inactivity. (226.5a(b)(2))
- (c) Any minimum or fixed finance charge that could be imposed during a billing cycle. (226.5a(b)(3))
- (d) Any transaction fee that may be imposed for the use of the card for purchases. (226.5a(b)(4))
- (e) The length (or range) of any "grace period" using that term, to repay the balance of purchases before a finance charge on such balance is imposed.

If there is no grace period, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. (226.5a(b)(5))

- (f) An explanation of the balance computation method.

If the method used by the institution is described by Section 226.5a(g), only the name of the method (for example, the "previous balance" method) is required to be disclosed. The explanation may appear outside the table if the table contains a reference to the explanation. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any. (226.5a(b)(6))

- (g) If applicable, a statement that charges incurred by use of the charge card are due when the periodic statement is received. (226.5a(b)(7))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- (h) The amount (or range, if different from state to state) of any cash advance fee imposed for an extension of credit. This disclosure may be outside the table. (226.5a(b)(8))
- (i) Any late payment charge (or range, if different from state to state). This disclosure may be outside the table. (226.5a(b)(9))
- (j) Any fee (or range, if different from state to state) that may be charged for exceeding the credit limit. This disclosure may be outside the table. (226.5a(b)(10))

Telephone Solicitations

9. Determine if, with creditor-initiated telephone applications and pre-approved solicitations to open credit or charge card accounts, the institution provides the consumer with either of the following:
- Oral disclosure of the first seven items of Section 225.5a(b), paragraphs (i) to (vii) (listed above under **Direct Mail Disclosures**, paragraphs (a) through (g))
 - If the institution does not impose an annual or periodic fee or does not impose the fee unless the consumer uses the card, written disclosure within 30 days after the consumer requests the card, but in no event later than the delivery of the card, one of the following:
 - The ten items required under Section 226.5a(b) listed above under **Direct Mail Disclosures** paragraphs (a) through (g)), accurate as of the mailing date, with the first seven items in tabular format
 - The fact that the consumer need not accept the card or pay any fee disclosed unless the consumer uses the card (226.5a(d)(2))
- (226.5a(d))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

Solicitations Other Than by Direct Mail or Telephone

10. Determine if, with creditor-initiated applications and solicitations to open credit or charge card accounts, made available to the public by means other than by mail or telephone (for example, applications in the form of "take-ones"), the institution discloses in writing the following, as applicable:

- On or with the application or solicitation, **accurate as of the printing date**

- The ten disclosure items included in Section 226.5a(b) that are listed above under **Direct Mail Disclosures** paragraphs (a) through (g), (with the first seven items in tabular format)

NOTE: If the APR is variable, determine that the institution discloses a fully indexed rate used within 30 days before the printing date.

- The date that the required information was printed, including a statement that the information was accurate as of that date and is subject to change
- A statement that the consumer should contact the institution for any changes in the information disclosed
- A toll-free telephone number or a mailing address for enabling the consumer to obtain information regarding changes in required disclosures

(226.5a(e)(1))

- On or with the application or solicitation, **accurate as of the time made available to the public**

- The disclosures required by Section 226.6(a) through 226.6(c)
- A statement that the consumer should contact the institution for any changes in the information disclosed
- A toll-free telephone number or a mailing address for enabling the consumer to obtain information regarding changes in the information disclosed

(226.5a(e)(2))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- On the application or solicitation, if the application or solicitation does not contain any information required to be disclosed under Section 226.5a(b) that are listed above under **Direct Mail Disclosures**
 - A statement that costs are associated with the use of credit cards
 - A statement that the applicant may contact the institution to request disclosure of specific cost information by calling a toll-free number or by writing to an address specified in the application
 - A toll-free telephone number and a mailing address for enabling the consumer to obtain cost information
- (226.5a(e)(3))

Special Disclosure Rules for Home Equity Loans

General Home Equity Plan Disclosure Requirements

11. Determine if an open-end home equity credit advertisement contains any of the following terms:
- Terms required to be disclosed under Section 226.6(a) or 226.6(b)
 - The payment terms, set forth either affirmatively or negatively
- If so, determine that the additional disclosures listed below are made:
- Any loan fee that is a percentage of the credit limit under the plan, and an estimate of all other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range
 - Any periodic rate used to compute the finance charge, expressed as an annual percentage rate
 - The maximum annual percentage rate that may be imposed in a variable-rate plan
- (226.16(d)(1))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

NOTE: For the purpose of Section 226.16(d), "payment terms" include such terms as the length of the draw period, the repayment period, how minimum periodic payments are determined and the timing of such payments.

- *Example: "Only \$100 per month in our home equity plan" or "Up to ten years to repay"*

"Payment terms" may be expressed either in the affirmative or the negative.

- *Examples: "Annual membership fee of \$40" and "No membership fees."*

Discounted Open-End Home Equity Credit Disclosures

12. Determine if an advertisement states an initial APR that is not based on the index and margin used to make later rate adjustments in a variable-rate plan.

If so, the advertisement must also include:

- Introductory rate and how long it will be in effect
- With equal prominence to the initial rate, a reasonably current APR that would have been in effect using the index and margin

(226.16(d)(2))

Additional Home Equity Disclosure Requirements

13. Determine that additional home equity disclosure requirements have been complied with, as applicable:

- Minimum monthly payments

If minimum monthly payments are disclosed, the advertisement must also disclose that a balloon payment may result, if applicable. (226.16(d)(3))

- Tax deductibility

Open-end home equity credit advertisements which state that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading. (226.16(d)(4))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Misleading terms

Open-end home equity credit advertisements cannot use misleading terms which would include reference to a home equity plan as "free money". (226.16(d)(5))

TIL Closed-End Credit

1. If the advertisement presents information on available closed-end credit, determine that required information is present for compliance with Regulation Z, as follows:
 - a. Credit terms mentioned within an advertisement should only be those terms the financial institution is prepared to offer. (226.24(a))
 - b. The advertised consumer loan rates should be expressed as "annual percentage rates" or "APRs". (226.24(b))
 - c. Advertisements for variable-rate consumer credit should disclose that the APR may be increased after consummation. (226.24(b))

(226.24)

Triggering Terms

2. Determine if the closed-end credit advertisement includes any of the following "triggering" terms:
 - Amount or percentage of any downpayment
Examples: "10% down," "\$1,000 down," "90% financing," or "trade-in with \$1,000 appraised value required." However, "no downpayment" or "low downpayment accepted" are not considered triggering terms.
 - Number of payments or the period of repayment
Examples: "Up to four years to pay," "48 months to pay," or "30-year mortgages available." However, "take years to repay," "pay weekly," or "monthly payments arranged" are not considered triggering terms.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Amount of any payment expressed as either a percentage or dollar amount

Examples: "Monthly payments less than \$250 on all our loan plans," "pay \$23.44 per \$1,000 amount borrowed," or "\$210.95 per month." However, "easy monthly payments" or "regular monthly payments" are not considered triggering terms.

- The amount of any finance charge

Examples: "Financing costs less than \$300 per year," "less than \$1,200 interest," or "\$2.00 monthly carrying charge." However, "no closing costs" or "financing available" are not considered triggering terms.

(226.24(c)(1))

3. If the advertisement contains one of the "triggering" terms listed above, the advertisement must also disclose **all** of the following:

- Amount or percentage of the downpayment
- Terms of repayment
- The APR

If the annual percentage rate may increase after consummation of the credit transaction, that fact also must be stated.

(226.24(c)(2))

Special Closed-End Credit Advertising Issues

4. Determine that advertisements for a reduced simple interest rate as a result of a buydown also include the following disclosures:

- The period the rate will be in effect
- The simple interest rate for the remainder of the loan
- The APR

Refer to Official Staff Commentary to Regulation Z, Section 226.24(b)

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

NOTE: A buydown may be described as when a consumer or third party (such as a seller) or both pay an amount to the creditor in order to reduce the consumer's payments or "buy down" the interest rate for all or a portion of the credit term.

5. Determine that any advertisement that shows a lower payment or effective rate in the early years for loans that have a graduated payment plan also shows:

- The term of the reduced payments
- The interest rate upon which the reduced payments are calculated ("effective" or "payment" rate)
- The "note rate" at which interest is actually accruing
- The APR

Refer to Official Staff Commentary to Regulation Z, Section 226.24(b)

6. Determine that an advertisement for credit with a discounted variable-rate feature states the reduced initial rate, provided the limited term to which the reduced rate applies is shown.

NOTE: Any limits or caps on periodic rate or payment adjustments need not be stated. The effect of any discount on the payment schedule for the discount period can be shown in an advertisement without triggering additional disclosures. When an advertisement for a discounted variable-rate loan contains triggering terms that require disclosure of all payment amounts for the duration of the loan, then all payments (including initial discount period and remaining period to maturity) which can be determined before consummation must be stated.

Refer to Official Staff Commentary to Regulation Z, Section 226.24(b)

Consumer Leasing (Regulation M)

1. If the advertisement presents information on available leasing plans, determine that information required by Regulation M is provided. (213.5)

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

2. Determine if a consumer lease advertisement includes any of the following "triggering" terms:

If so, the advertisement must also disclose **all** of the following:

- A statement that the transaction advertised is a lease
- The total amount of any payment (such as a security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required
- The number, amounts, due dates or periods of scheduled payments, and the total of these payments under the lease
- A statement explaining whether the customer (lessee) has the option to purchase the leased property and, if so, at what time and price

NOTE: The method of determining the price may be substituted for disclosure of the price.

- A statement of the amount (or method of determining the amount) of any liabilities the lease imposes upon the customer (lessee) at the end of the term

NOTE: If the customer has this liability, the advertisement also must include a statement that the customer is responsible for any difference between the estimated value of the leased property and its realized value at the end of the lease term. (213.5(c)(5))

Examples of "triggering" terms include:

- The amount of any payment ("pay a mere \$128 per month")
- The number of required payments ("\$133 per month . . . 36 month lease" or "low monthly payments on four-year auto lease")
- A statement that any downpayment or no downpayment, or other payment, is required at the beginning of the lease ("lease now and make no payments for three months" or "only a small downpayment")

(213.5(c))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

Special Rule for Radio Broadcast

NOTE: Section 184 of the Consumer Credit Protection Act provides special consideration for a consumer lease advertisement by radio broadcast.

3. Determine whether a "triggering" term for a consumer lease is stated within a consumer lease advertisement by radio broadcast.

If so, other disclosures may be limited to the following:

- A statement that the transaction advertised is a lease
- The total amount of any payment (such as a security deposit or capitalized cost reduction) required at the beginning of the lease, or a statement that no such payment is required
- The number, amounts, due dates or periods of scheduled payments, and the total of these payments under the lease
- A referral to either a toll-free telephone number for further information, or a written publicly circulated advertisement which includes information required to be disclosed

NOTE: Further details for establishing a toll-free telephone number and necessary requirement for referral to a written form of advertisement are included in Section 184.

(213.5(c))

Truth in Savings (Regulation DD)

1. If the advertisement presents information on available deposit services, determine that prescribed information is present for compliance with Regulation DD. (230.8)

2. If any advertisement for a deposit account contains the phrase "free" or "no cost," determine that this type of account does not have any activity or maintenance or similar charge. (230.8(a))

NOTE: If a deposit account is linked to another required deposit account, as a savings account being necessary before a customer can open a transaction deposit account, the linked account must also be considered for any associated activity or maintenance charges to determine appropriateness for advertising as "free" or "no cost".

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

Examples of disqualifying types of maintenance and activity fees include:

- Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions

Examples: "\$.25 fee on each transaction over six in any statement period" or "\$10.00 monthly fee on accounts which do not maintain a \$1,000 minimum balance"

- Transaction and service fees that consumers reasonably expect to be imposed on a regular basis
- A flat fee, such as a monthly service fee
- Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges

Examples: "\$.25 for each withdrawal, whether by check or in person"

NOTE: Use of the terms "free" or "no cost" can be used in reference to a specific account service or if a service is free for a limited time or under special conditions not related to a deposit account as long as it is not misleading. For example, "checking accounts are free of deposit or withdrawal fees," "free checking accounts for one year," or "free NOW accounts for persons 65 years in age or older".

3. Determine that the word "profit" is not used with reference to interest paid on an account. (230.8(a))

4. If the advertisement states a rate of return, determine that it uses the term "annual percentage yield". (230.8(b))

NOTE: The abbreviation "APY" is permissible only if the term "annual percentage yield" is stated at least once in the advertisement.

5. If the advertisement uses the term "interest rate", identify whether it is used in conjunction with, and not more conspicuous than, the annual percentage yield. (230.8(b))

6. Determine that the annual percentage yields and deposit interest rates are rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. (230.3(f)(1))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

7. If the advertisement identifies "tiered rate" accounts using APY, then it must also present the APY for each tier, as well as the corresponding minimum balance requirements. *Refer* to Official Staff Interpretations to Regulation DD, Section 230.8(b).

8. If the advertisement identifies interest rates for "stepped rate" accounts, then it must also state all the interest rates and the time period that each rate is in effect. *Refer* to Official Staff Commentary to Regulation DD, Section 230.8(b).

9. When an APY or bonus is advertised, other disclosures are also required. However, Section 230.8(e)(1) limits the number of additional disclosures for broadcast or electronic media (for example, radio and television), outdoor media such as billboards, or telephone response machines to the following:

- The minimum balances to obtain the advertised annual percentage yield
 - The term of time accounts
 - Information relating to any bonus being advertised to include time required to obtain the bonus and minimum balance required to obtain the bonus

10. Determine that advertisements which state an APY also state the following in a clear and conspicuous manner, unless excluded by Section 230.8(e):

- Advertisements for variable-rate accounts must include a statement that the rate may change
- The effective time period for an APY, for example, "offered until December 31" or "effective as of June 30"
- Any minimum balance required to obtain the APY

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Any minimum balance to open the account if it is greater than the balance necessary to obtain the APY
- Any maintenance or activity fees that could reduce earnings on the account, for example, "withdrawal fees of \$1.00 per transaction are not included with the stated APY"
- For time accounts, the term of the account and a statement, if applicable, that a penalty will or may be imposed for early withdrawal

(230.8(c))

11. Determine that advertisements which state that a bonus will be given also state, unless excluded by 230.8(e):

- The APY
- The time requirement to obtain the bonus
- The larger of the minimum balance required to obtain a bonus or the minimum balance required to open the account
- When the bonus will be provided

(230.8(d))

Equal Credit Opportunity, Regulation B

1. Review individual advertisements for content which may be misleading or suggest discriminatory practices by the institution on a prohibitive basis.

NOTE: Section 202.5(a) of Regulation B forbids a creditor from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application for credit.

**WORKPAPER
STANDARDS**

Appropriate workpapers must be completed when reviewing advertisement media for compliance. Refer to Standardized Workpapers, Appendix K, in this Manual.

**FDIC LAW,
REGULATIONS,
& RELATED
ACTS****Applicable Rules**

Consumer Credit Protection Act, Chapter 3 – Credit Advertising, Volume 2, Page 6588.13

Home Mortgage Disclosure Act of 1975, Volume 3, Page 8687

Part 328 – Advertisement or Membership, Volume 1, page 2297

Part 329 – Interest on Deposits, Volume 1, Page 2311

Part 338 – Fair Housing, Volume 1, Page 2647

Part 345 – Community Reinvestment Act, Volume 1, Page 2781

Regulation C – Home Mortgage Disclosure Act, Volume 3, Page 7553

Regulation CC – Availability of Funds and Collection of Checks, Volume 3, Page 7889

Regulation DD – Truth in Savings, Volume 2, Page 7429

Regulation M – Consumer Leasing, Volume 2, Page 6685

Regulation Z – Truth in Lending, Volume 2, Page 6641

Truth in Lending Act, Volume 2, Page 6565

Truth in Savings Act, Volume 3, Page 8550.10

**Advisory
Opinions**

Posting FDIC Signs in Embassy Branches, Letter #88-78, dated 12/1/88, Volume 1, Page 4378

Regulation DD: Sufficiency of Proposed Disclosures of Annual Percentage Yields for Tiered-Rate Accounts, Letter #93-56, dated 8/13/93, Volume 1, Page 4792



**FDIC LAW,
REGULATIONS,
& RELATED
ACTS
(cont'd)**

Regulation DD – Tiered-Rate Accounts and Disclosure Statement Requirements, Letter #93-67, dated 9/27/93, Volume 1, Page 4809

Regulation DD, Truth in Savings: Disclosures in Advertisements Soliciting Deposits, Letter #94-54, dated 11/30/94, Volume 1, Page 4908

Technical Questions Concerning Display of Official FDIC Logo in Banks, Letter #90-64, dated 11/13/90, Volume 1, Page 4495

**Advisory
Opinions
(cont'd)**

**Statements of
Policy**

None

**DCA
MEMORANDA**

None

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, Letter #61-95, dated 9/13/95

Fair Housing: Revised Poster Required to Be Displayed, Letter #1-95, dated 1/6/95

Pamphlet on Home Mortgage Lending and Equal Treatment, Letter #19-92, dated 3/16/92

OTHER

Examination Procedures for Banks Involved with the Sale of Nondeposit Investment Products, Transmittal #DOS-94-067, dated 4/28/94